

**tabbies®**

2. Defendant Publishing Concepts, L.L.C. d/b/a Missouri Meetings & Events (Publishing Concepts) is a Missouri limited liability company with its registered agent in St. Louis County.

3. Defendant Joseph W. Clote is an individual who resides in St. Louis County.

4. John Does 1-5 are not presently known and will be identified through discovery.

5. Jurisdiction is proper in Missouri.

6. Venue is proper.

#### **THE FAX**

7. On May 13, 2014, Defendants used a telephone facsimile machine, computer, or other device to send to Plaintiff's telephone facsimile machine at (314) 421-5433 an unsolicited advertisement, a true and accurate copy of which is attached as **Exhibit 1** (Fax).

8. The Fax advertised the commercial availability of property, goods, and services, including, but not limited to education, food, beverages, a seated luncheon, a medical meeting planner certificate, and education.

9. A true copy of Exhibit 1 is pasted hereafter:



# MISSOURI EXPO™

MEETINGS & EVENTS

May 19-20, 2014 • Sheraton Clayton Plaza Hotel  
7730 Bonhomme Avenue, St. Louis, MO 63105

## REGISTER WITH THIS FORM AND SAVE!!

Experience TWO days of valuable networking, education, food, entertainment, great prizes and all your resources in one place! Also earn credit hours and CEUs while learning from the industry's best!

☐ **YES!**

I am interested in participating in the MEET Business Exchange, a networking session being held on Monday evening, May 19, 2014.

If yes, please list six categories or names of companies you would like to meet with (i.e. caterers, venues, entertainment, accommodations etc.) \_\_\_\_\_

**Please complete all fields (please print):**

Firm/Organization: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Web Site: \_\_\_\_\_  
Contact/Attendee Name (first/last): \_\_\_\_\_ Title: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

(Please check one)

- ☐ **Monday ONLY** **\$60**  
Includes education, MEET Business Exchange, planner reception and food and beverages.
- ☐ **Tuesday ONLY** **\$85**  
Includes education, supplier tradeshow, seated luncheon, closing reception and eligibility for grand prize.
- ☐ **BEST VALUE! Two-Day Pass** **\$110**  
Monday AND Tuesday, all-inclusive.



☐ **Yes, I would like to attend the trade show portion only (meals not included) FREE!**

With my attendance at this event, I acknowledge that I and/or my company's products and employees may be included in publicity photos and/or video for Missouri Meetings & Events Magazine, its Web site and future promotional materials. I hereby give my consent to the event's producers to use any such photos, video and/or comments.

**AUTHORIZED SIGNATURE:** \_\_\_\_\_

**PAYMENT:** (Please check one)

☐ Charge my credit card: \_\_\_\_\_ Visa \_\_\_\_\_ MasterCard \_\_\_\_\_ AmEx \_\_\_\_\_ Discover  
Card #: \_\_\_\_\_ 3 Digit Security Code \_\_\_\_\_ Expiration Date: \_\_\_\_\_  
Cardholder's Name (Print): \_\_\_\_\_

**AUTHORIZED SIGNATURE:** \_\_\_\_\_

(A charge from Publishing Concepts LLC will appear on your credit card statement)

☐ I have included a check. Make checks payable to **Missouri Meetings & Events**. Send payment with completed registration form. Confirmation will be sent to you prior to the show.

**DO YOU KNOW OF OTHER PEOPLE INTERESTED IN ATTENDING?**

Please make photocopies of this form for additional planners wishing to attend.

**MAIL OR FAX TO:** Missouri Meetings & Events, 6590 Scanlan Avenue, St. Louis, MO 63139  
Phone: St. Louis (314) 781-8880 • Fax: (314) 781-8848 • [www.Meetmags.com/mme/expos/](http://www.Meetmags.com/mme/expos/)

**TO BE REMOVED FROM FUTURE FAXES PLEASE CALL 800-841-4362 EXT. 49440**

Ex. 1

10. The opt-out notice on the Fax did not include a facsimile number to send an opt-out request and did not state that the recipient may make a request

to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, with such a request is unlawful.

### THE TCPA

11. Under the Telephone Consumer Protection Act of 1991, as amended by the Junk Fax Prevention Act of 2005, 47 U.S.C. § 227, and the regulations promulgated thereunder (individually and collectively hereafter, “TCPA”), any “unsolicited advertisement” sent to a “telephone facsimile machine” must meet three requirements: (1) the sender must have an “established business relationship” with the recipient; (2) the sender must have acquired the recipient’s fax number either directly from the recipient or from a public source where the recipient made its number publicly available; and (3) the facsimile must include certain information in an opt-out notice to inform the recipient of the ability and means to avoid future unsolicited advertisements. *See* 47 U.S.C. § 227(b)(1)(C)(i)-(iii); 47 C.F.R. § 64.1200(a)(4)(i)-(iv).

12. The opt-out notice must (1) be “clear and conspicuous and on the first page of the advertisement”; (2) “state that the recipient may make a request to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, with such a request . . . is unlawful”; (3) include “[a] domestic contact telephone number and facsimile machine number for the recipient to transmit such a request to the sender,” and “[i]f neither the required telephone number nor facsimile machine number is a toll-free number, a separate cost-free

mechanism including a Web site address or email address, for a recipient to transmit a request pursuant to such notice to the sender of the advertisement.” 47 C.F.R. § 64.1200(a)(4)(iii)(A)-(D) (emphasis added).

13. “The fact that Defendants may have obtained the fax numbers through a prior relationship with the class members or through voluntary consent does not eliminate the TCPA’s opt-out notice requirement.” *C-Mart, Inc. v. Metropolitan Life Ins. Co.*, No. 13-80561-CIV, 2014 U.S. Dist. LEXIS 13717, at \*14 (S.D. Fl. Feb. 4, 2014) (citing *Nack v. Walburg*, 715 F.3d 680 (8th Cir. 2013)).

14. “Even when the [TCPA] permits fax ads—as it does to persons who have consented to receive them, or to those who have established business relations with the sender—the fax must tell the recipient how to stop receiving future messages.” *Ira Holtzman, C.P.A. v. Turza*, 728 F.3d 682, 684 (7th Cir. 2013) (citing 47 U.S.C. § 227(b)(1)(C)(iii), (2)(D)).

15. “A facsimile broadcaster will be liable for violations of [Section 64.1200(a)(4)]. . . , including the inclusion of opt-out notices on unsolicited advertisements, if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.” 47 C.F.R. § 64.1200(a)(4)(vii).

16. The TCPA provides a private right of action to enjoin violations, to receive statutory damages of \$500 for each such violation, or both such actions. 47 U.S.C. § 227(b)(3)(A)-(C).

17. For willful and knowing violations of the TCPA, the Court may award treble damages, i.e., up to \$1,500 per violation. 47 U.S.C. § 227(b)(3).

### **CLASS ACTION ALLEGATIONS**

18. Plaintiff brings this class action on behalf of the following class of persons, hereafter, the "Class":

All persons who (1) on or after four years prior to the filing of this action, (2) were sent telephone facsimile messages of material advertising the commercial availability of any property, goods, or services by or on behalf of Defendants, and (3) which did not display a proper opt-out notice.

11. Excluded from the Class are Defendants, their employees, agents, and members of the judiciary.

12. Plaintiff reserves the right to amend the class definition upon completion of discovery related to class-certification.

13. Numerosity: Plaintiff alleges that, on information and belief, Defendants sent the same or other substantially similar unsolicited facsimiles without the required opt-out language, from 47 C.F.R. § 64.1200(a)(4), to more than forty other persons or entities. Joinder of all Class members is impracticable.

14. Commonality: Common questions of law and fact apply to the claims of all Class members, including, but not limited to, the following:

- a. Whether Defendants sent unsolicited facsimile advertisements;
- b. Whether the facsimiles Defendants sent advertised the commercial availability of property, goods, or services;



- c. Whether the facsimiles Defendants sent contained a TCPA-compliant "opt-out notice";
- d. The manner and method Defendants used to compile or obtain the list of fax numbers to which they sent the Fax and other unsolicited facsimile advertisements;
- e. Whether Defendants sent unsolicited facsimile advertisements without first obtaining the recipients' prior express invitation or permission;
- f. Whether Defendants violated the TCPA;
- g. Whether Defendants should be enjoined from sending TCPA-violating facsimile advertisements in the future;
- h. Whether Plaintiff and the Class are entitled to statutory damages; and
- i. Whether the Court should award treble damages for Defendants' knowing and willful violations of the TCPA;

15. Typicality: Plaintiff's claims are typical of the claims of all Class members. On information and belief, the Fax received by Plaintiff was substantially the same as the faxes sent by or on behalf of Defendants to the Class. Plaintiff is making the same claims and seeking the same relief for itself and all Class members based upon the same federal statute and federal regulation. Defendants have acted the same or in a similar manner with respect to Plaintiff and all Class members by sending Plaintiff and each member of the Class faxes with the same TCPA violations.

16. Adequacy: Plaintiff will fully and adequately protect the interests of the members of the Class, does not have interests which are contrary to, or

conflicting with, those interests for the Class, and has retained experienced and qualified counsel.

17. Need for Consistent Standards and Practical Effect of Adjudication:

Class certification is appropriate because the prosecution of individual actions by Class members would (a) create the risk of inconsistent adjudications that could establish incompatible standards of conduct for Defendants and (b) as a practical matter, adjudication of Plaintiff's claims will be dispositive of the interests of Class members who are not parties.

18. Common Conduct:

Class certification is appropriate because Defendants have acted and refused to act in the same or similar manner with respect to all Class members, thereby making injunctive and declaratory relief appropriate. Plaintiff demands such relief as authorized by Section 227(b)(3).

19. Predominance and Superiority:

Common questions of law and fact predominate over any questions affecting only individual members, and a class action is superior to other methods for the fair and efficient adjudication of the controversy because:

- a. Proof of Plaintiff's claim will also prove the claims of the Class without the need for separate or individualized proceedings;
- b. Evidence regarding defenses or any exceptions to liability that Defendants may assert and prove will come from Defendants' records and will not require individualized or separate inquiries or proceedings;
- c. Defendants have acted and are continuing to act pursuant to common policies or practices in the same or similar manner with respect to all class members;
- d. The amount likely to be recovered by individual Class members does not support individual litigation. A class action will permit a large



number of relatively small claims involving virtually identical facts and legal issues to be resolved efficiently in one case based upon common proofs; and

- e. This case is inherently manageable as a class action in that:
  - (i) Defendants identified persons or entities to receive the fax transmissions and it is believed that Defendants' computer and business records will enable Plaintiff to readily identify Class members and establish liability and damages;
  - (ii) Liability and damages can be established for Plaintiff and the Class with the same common proofs;
  - (iii) Statutory damages under the TCPA are the same for all class members and can be calculated in the same or a similar manner;
  - (iv) A class action will result in an orderly and expeditious administration of claims and it will foster economics of time, effort and expense;
  - (v) A class action will contribute to uniformity of decisions concerning Defendants' practices; and
  - (vi) As a practical matter, the claims of the Class are likely to go unaddressed absent class certification.

#### **CLAIM FOR RELIEF**

20. Defendants used a telephone facsimile machine to send the Fax to Plaintiff.

21. Plaintiff received the Fax.

22. The Fax is an unsolicited advertisement.

23. The Fax constitutes material advertising the commercial availability of property, goods, or services.

24. Plaintiff had not provided prior express invitation or permission, in writing or otherwise, to Defendants to send the Fax.

25. The Fax consumed Plaintiff's ink or toner, paper, and time, thereby damaging Plaintiff.

26. Such time otherwise would have been spent on Plaintiff's business activities.

27. The Fax unlawfully interrupted Plaintiff's privacy interests in being left alone and in determining how to use Plaintiff's resources.

28. The injury and property damage sustained by Plaintiff and the other members of the Class from Defendants' sending advertisements occurred outside of Defendants' premises.

29. The Fax does not contain a proper opt-out notice under the TCPA.

30. The TCPA is a strict-liability statute; therefore, Defendants are liable to Plaintiff and to the Class even if Defendants' actions were only negligent.

31. But Defendants knew or should have known that (a) Plaintiff and Class had not given express invitation or permission for Defendants to send facsimile advertisements about Defendants' property, goods, or services; (b) Plaintiff and Class did not have an established business relationship with Defendants; (c) Defendants transmitted advertisements; (d) the Fax did not contain the required opt-out notice; and (e) Defendants' transmission of advertisements that did not contain the required opt-out notice was unlawful.

WHEREFORE, Plaintiff Connector Castings, Inc., individually and on behalf of all others similarly situated, demands judgment in its favor and against Defendants Publishing Concepts, L.L.C. d/b/a Missouri Meetings & Events, Joseph W. Clote, and John Does 1-5, jointly and severally, as follows:

- a. certify this action as a class action and appoint Plaintiff as Class representative;
- b. appoint the undersigned counsel as Class counsel;
- c. award damages of \$500 per facsimile pursuant to 47 U.S.C. § 227(a)(3)(B);
- d. award treble damages up to \$1,500 per facsimile pursuant to 47 U.S.C. § 227(a)(3);
- e. enjoin Defendants and their contractors, agents, and employees from continuing to send TCPA-violating facsimiles pursuant to 47 U.S.C. § 227(a)(3)(A);
- f. award class counsel reasonable attorneys' fees and all expenses of this action and require Defendants to pay the costs and expenses of class notice and claim administration;
- g. award Plaintiff an incentive award based upon its time expended on behalf of the Class and other relevant factors;
- h. award Plaintiff prejudgment interest and costs; and
- i. grant Plaintiff all other relief deemed just and proper.

Filed: January 29, 2015

SCHULTZ & ASSOCIATES LLP

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*Attorneys for Plaintiff*

15SL-CC00305



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**Please complete all fields (please print):**

Firm/Organization: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Web Site: \_\_\_\_\_

Contact/Attendee Name (first/last): \_\_\_\_\_ Title: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

(Please check one)

☐ **Monday ONLY** **\$60**

Includes education, MEET Business Exchange, planner receptions and food and beverages.

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**PAYMENT:** (Please check one)

☐ Charge my credit card: \_\_\_\_\_ Visa \_\_\_\_\_ MasterCard \_\_\_\_\_ AmEx \_\_\_\_\_ Discover \_\_\_\_\_

Card #: \_\_\_\_\_ 3 Digit Security Code \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Cardholder's Name (Print): \_\_\_\_\_

**AUTHORIZED SIGNATURE:** \_\_\_\_\_

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